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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)	Case No. 1:18-cr-00214
)	
v.)	The Honorable T.S. Ellis, III
)	
BOBBY PERKINS, JR.,)	Sentencing: August 31, 2018
)	
Defendant.)	

UNITED STATES' POSITION ON SENTENCING

The United States of America, through undersigned counsel and in accordance with 18 U.S.C. § 3553(a) and the U.S. Sentencing Commission Guidelines Manual (the "Guidelines" or "U.S.S.G."), hereby provides its position with respect to sentencing for defendant Bobby Perkins, Jr. The government has reviewed the Pre-Sentence Investigation Report (the "PSR") and concurs with the findings of the Probation Office, which has correctly calculated Perkins' total sentencing range for all counts of conviction to be 147 to 168 months (consisting of 87 to 108 months on Counts 1 and 3 and a 60-month mandatory minimum on Count 2). The government respectfully recommends that the Court sentence Perkins to a total term of imprisonment of 168 months, which period appropriately accounts for the various factors that the Court must consider pursuant to § 3553(a), to be followed by a total term of supervised release of five years.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Because the government agrees with the description of the offenses as set forth in the PSR, all of the pertinent facts will not be recounted here. The government does, however, summarize Perkins' criminal conduct.

Between May 2015 and September 2015, Perkins met with Leonard Laraway approximately 25 times. Over the course of these meetings, Perkins purchased from Laraway over

200 firearms, the vast majority of which were semi-automatic pistols. Perkins then re-sold these firearms to various persons, some of whom he knew to be convicted felons, primarily in Stafford County, Virginia and Washington, D.C.

Additionally, from approximately August 2015 through March 2018, in Stafford County, Fredericksburg, Virginia, and elsewhere, Perkins organized and supervised a conspiracy to distribute and possess with the intent to distribute controlled substances, including marihuana, cocaine base, heroin, cocaine, and 3,4- methylenedioxymethamphetamine (also known as “MDMA” or “molly”). Perkins would travel to Washington, D.C. by vehicle, purchase drugs there, and then transport them back to Stafford, Virginia, where he would distribute them primarily to lower-level dealers, some of whom were his co-conspirators. Perkins principally distributed drugs out of an apartment being rented by Chancellor Tolliver,¹ one of his co-conspirators who, as many of Perkins’ co-conspirators and associates did, referred to Perkins as “The Plug,” slang for source of supply of drugs. During the course of the conspiracy, Perkins almost always carried a firearm, which he did to protect his person, his drugs, and the proceeds of his illicit activities. He also supplied his co-conspirators with firearms, which they used in furtherance of the conspiracy.

On June 4, 2018, Perkins waived indictment and pleaded guilty to a three-count criminal information charging him with the following: (1) conspiracy to distribute and possess with the intent to distribute controlled substances, in violation of 21 U.S.C. §§ 841(a)(1) and 846; (2) using

¹ On March 2, 2017, in the Stafford County Circuit Court, Tolliver was convicted of first-degree murder and using a firearm during the commission of a felony. He was subsequently sentenced to a total term of imprisonment of 33 years. According to witnesses interviewed by law enforcement, Perkins provided the gun that Tolliver used to commit the murder, was present during the murder, instructed Tolliver to shoot the victim, and helped Tolliver escape the scene and dispose of evidence.

and carrying a firearm during and in relation to a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A); and (3) dealing in firearms without a license, in violation of 18 U.S.C. §§ 922(a)(1)(A) and 923(A).

II. GUIDELINES CALCULATIONS

As the Court well knows, although the Guidelines are advisory, sentencing courts must consult those Guidelines and take them into account when sentencing. *United States v. Booker*, 543 U.S. 220, 261 (2005). Thus, at sentencing a court must first calculate the Guidelines range applicable to the defendant. *Nelson v. United States*, 555 U.S. 350, 351 (2009).

A. Counts 1 and 3

When a defendant has been convicted of more than one count, the first step in determining the appropriate combined Guidelines range is grouping closely related counts where applicable. *See* U.S.S.G. § 3D1.1(a)(1). Based on his misinterpretation of U.S.S.G. § 3D1.2(d), Perkins maintains that Count 1, the drug-distribution conspiracy offense, and Count 3, the offense charging unlawful dealing in firearms, should be combined into a single group.² Subsection 3D1.2(d) provides that offenses covered by a category of guidelines—including, § 2D1.1 and § 2K2.1, which encompass Count 1 and Count 3, respectively—are to be grouped together. Perkins reads § 3D1.2(d) to mandate automatic grouping of offenses within that category. But this cannot be so, as even a cursory examination of those guidelines demonstrates.

Among others, the guidelines in § 3D1.2(d) cover the following disparate offenses: failure to register as a sex offender (§ 2A3.5); insider trading (§ 2B1.4); labor racketeering (§ 2E5.1);

² Because § 924(c) specifies a term of imprisonment to be imposed and requires that such term of imprisonment be imposed to run consecutively to any other term of imprisonment, Count 2 is excepted from the Guidelines' multiple-count rules. *See* U.S.S.G. § 3D1.1(b)(1).

harboring an unlawful alien (§ 2L1.1); price-fixing (§ 2R1.1); and non-payment of taxes (§ 2T2.1). The list goes on. Plainly, § 3D1.2(d) does not require the grouping of counts in a single indictment or criminal information charging these offenses. Indeed, to read the Guidelines as such would contravene the very purpose of their count-grouping rules, which is to avoid unwarranted double counting by grouping counts “involving substantially the same harm.” U.S.S.G. § 3D1.2(d); *cf. id.* comment. n.6 (“Counts involving offenses to which different offense guidelines apply are grouped together under subsection (d) *if the offenses are of the same general type . . .*” (emphasis added)).

In *United States v. Covington*, 818 F. Supp. 159, 161 (E.D. Va. 1993), the defendant, like Perkins, asserted that Count 1, charging him with a drug offense, and Count 3, charging him with a firearms offense, should be grouped. This Court squarely rejected that argument, concluding that “while the offenses in Count 1 and Count 3 may be among those enumerated in subsection (d)’s first category, automatic grouping of these counts is inappropriate because they do not reflect offenses of the same general type.” *Id.*

In the instant case, Counts 1 and 3 charge substantially different crimes—specifically, drug trafficking and gun running—that harmed different societal groups and occurred over different time periods.³ Grouping, in this context, “would inappropriately fail to give independent sentencing effect to each offense.” *Id.* at 162. Count 1 and Count 3 should therefore each constitute its own group. *See* U.S.S.G. § 3D1.2 comment. n. 7 (“[A] Group may consist of a single count.”).

³ As previously mentioned, Perkins was dealing firearms without a license between May 2015 and September 2015 and was involved in a drug-distribution conspiracy between August 2015 and March 2018.

The next step, then, in determining the Guidelines range for Counts 1 and 3 is to ascertain the adjusted offense level for each count. *See* U.S.S.G. § 3D1.3. The base offense level for Count 1 is 28, based on a total combined marihuana equivalency of 991.5 kilograms. *See id.* §§ 2D1.1(a)(5) and (c)(6). The offense level is then increased by two levels because Perkins was an organizer, leader, manager, or supervisor of the conspiracy. *See id.* § 3B1.1(c). Thus, the adjusted offense level for Count 1 is 30.

The base offense level for Count 3 is 12. *See id.* § 2K2.1(a)(7). The offense level is then increased by 10 levels because the offense involved 200 or more firearms. *See id.* § 2K2.1(b)(1)(E). The offense level is further increased by four levels because Perkins engaged in the trafficking of firearms. *See id.* § 2K2.1(b)(5). Finally, the offense level is increased by four levels because Perkins possessed or transferred firearms with knowledge, intent, or reason to believe that they would be used or possessed in connection with another felony offense—namely, felon-in-possession, given that Perkins knew some of the individuals to whom he sold guns were convicted felons barred from possessing such weapons. *See id.* § 2K2.1(b)(6)(B). Thus, the adjusted offense level for Count 3 is 30.

When the adjusted offense levels are the same, the combined offense level is determined by increasing that adjusted offense level by an amount tied to the total number of units. *See* U.S.S.G. § 3D1.4. One unit is assigned to the group with the highest offense level (here, either group suffices, given that each has the same offense level), and one additional unit is assigned to each group that is equally serious. *See id.* § 3D1.4(a). Here, this calculus results in two units. Based on the table set forth in § 3D1.4, two units requires a two-level increase to the adjusted offense level. Thus, the combined adjusted offense level is 32.

Because Perkins has clearly demonstrated acceptance of responsibility for his crimes, the adjusted offense level is reduced by two levels. *See id.* § 3E1.1(a). A further one-level reduction is warranted because Perkins has assisted authorities by timely notifying them of his intention to enter pleas of guilty. Thus, the total offense level for Counts 1 and 3 is 29. With a criminal history category of I, Perkins' Guidelines range for those counts is 87 to 108 months.⁴

B. Count 2

Perkins faces a mandatory minimum term of imprisonment of 60 months and a maximum sentence of life in prison for the count of conviction under § 924(c). For that count, the Guidelines sentence is the 60-month minimum term of imprisonment required by statute. *See id.* § 2K2.4(b).

III. SECTION 3553(a) FACTORS

As the Court is also well aware, after calculating the applicable Guidelines range, a sentencing court must then consider that range, as well as the sentencing factors set forth in 18 U.S.C. § 3553(a), and determine a sentence that is appropriate and reasonable for the individual defendant. *See Nelson*, 555 U.S. at 351; *see also United States v. Green*, 436 F.3d 449, 455 (4th Cir. 2006) (stating that the sentencing court must “fulfill the congressionally established objectives for sentencing: promoting respect for the law; providing just punishment for the offense; affording adequate deterrence; protecting the public from further criminal activity of the defendant; providing the defendant training, medical care, and correctional treatment; and providing restitution to victims”). Based on those factors, a total term of 168 months is reasonable and warranted in this case.

⁴ It should be noted that, for Count 1, there is a 60-month mandatory minimum term of imprisonment based on the amount of heroin and cocaine base attributable to Perkins. *See* 21 U.S.C. § 841(b)(1)(B). For Count 3, there is a 60-month statutory maximum term of imprisonment. *See* 18 U.S.C. § 924(a)(1)(D).

The nature and circumstances of the offenses of conviction counsel strongly in favor of a lengthy term of imprisonment. Perkins organized, supervised, and engaged in a conspiracy to distribute drugs, primarily in one pocket of Stafford, Virginia. In so doing, Perkins was responsible for bringing into that community, over a relatively short period of time, substantial quantities of highly addictive, potentially lethal controlled substances, including 200 grams of cocaine base and 200 grams of heroin. Throughout all aspects of the conspiracy—from traveling to and from Washington, D.C. to acquire the drugs to selling those drugs out of his co-conspirator's apartment—Perkins was always armed with at least one, and often more than one, firearm. What is more, he made sure that his co-conspirators were armed, too, typically with guns that he supplied, thereby augmenting the risk that somebody would be shot and killed, whether purposefully or accidentally. According to one witness to Perkins' drug-distribution activities, Perkins' personal slogan was "always be ready to shoot." For years, Perkins embodied the threat implicit in that motto, using guns and his presence in Stafford to instill members of that community with fear.⁵

⁵ For example, on January 17, 2016, deputies with the Stafford County Sheriff's Office (the "SCSO") responded to a call for shots fired near an apartment building in Stafford, Virginia. There, they encountered two men who explained that they had been hanging out in the parking lot outside of the apartment building when a dark-colored sedan with New Jersey plates approached and a male inside the vehicle asked if they knew the whereabouts of "Carson." The two men responded that they did not know anybody by that name. At that point, the vehicle drove away, but it circled back through the parking lot, and upon its second approach, a passenger in the rear of the sedan pointed a pistol at the two men and began shooting. The two individuals then returned fire with guns that they had on them. One of the men who was shot at described the driver of the vehicle as a heavy-set black male with a beard. A couple of days later, the SCSO found a dark-colored sedan with New Jersey plates and several bullet holes in its body abandoned elsewhere in Stafford. The SCSO determined that the vehicle had been rented in Stafford in Perkins' wife's name. Investigators eventually identified Perkins and Robert L. Shorts, Jr., one of Perkins' co-conspirators in the drug-distribution conspiracy described above, as suspects in this shooting. See PSR ¶ 4 (noting that Shorts was indicted in this Court on August 7, 2018).

On August 1, 2016, a grand jury in Stafford County indicted Perkins and Shorts on 12 felony counts each. On November 29, 2017, Shorts pleaded guilty in Stafford County Circuit

Not content to confine his criminal conduct to armed drug dealing, Perkins also obtained and re-sold firearms, without a license to do so, for profit. The magnitude of Perkins' gun running is difficult to overstate. By his own admission, in the span of just five months, Perkins sold over 200 handguns, including to individuals that he knew were convicted felons legally prohibited from possessing firearms. To date, 93 of the guns sold by Perkins have been recovered by law enforcement in Virginia, Washington, D.C., Maryland, Pennsylvania, and New Jersey. Of particular significance is the fact that, based primarily on the analysis of recovered shell casings, five of those firearms have been tied to three different homicides, two of which occurred in Washington, D.C. and one of which occurred in Lanham, Maryland. Underscoring the unpredictability and cruelty of gun violence, one of the pistols sold by Perkins has been connected to the murder of Perkins' own cousin in Washington, D.C.

Stepping back, there are no mitigating circumstances capable of justifying, excusing, or even explaining Perkins' dangerous and destructive conduct. As the PSR reflects, Perkins had a stable, middle-class upbringing, obtained his GED at age 16, spent time in the United States Marine Corps, was for several years gainfully employed as an electrician, has benefited from his wife's employment with Georgetown University Hospital, maintains close relationships with his parents and siblings, and appears not to have ever suffered from any serious mental, emotional, or substance abuse problems. See PSR ¶¶ 89, 92, 94, 101-09. No demons from his past nor

Court to one count of maliciously discharging a firearm from a vehicle and two counts of discharging a firearm at a building or dwelling. The remaining charges against him were dismissed. Following a mistrial and several continuances, Perkins is scheduled to stand trial in the Stafford County Circuit Court beginning October 10, 2018, on two counts of attempted malicious assault, two counts of conspiracy to commit malicious assault, one count of using a firearm during the commission of a felony, and one count of discharging a firearm at a building or dwelling.

deprivations of the present drove him to engage in the criminal activity that brings him before this Court.

In light of the nature and circumstances of Perkins' crimes, a sentence at the high end of the Guidelines range is just. Such a period of incarceration would also provide the requisite deterrent factor for narcotics and firearms offenses similar to those committed by Perkins. *See* 18 U.S.C. § 3553(a)(2)(B). Indeed, young men like Perkins must know that they will be held responsible and duly punished for engaging in concerted, grievous, and armed criminal acts.

IV. CONCLUSION

The government asks this Court to impose a sentence of 108 months on Count 1 of the criminal information and 60 months on Count 3 to run concurrently with the sentence imposed on Count 1. The government further asks this Court to impose a sentence of 60 months on Count 2 to run consecutively to the total term of imprisonment imposed on Counts 1 and 3, resulting in a total term of imprisonment on all counts of 168 months. Such a sentence would account for the nature of Perkins' crimes, promote respect for the law, and provide the requisite level of specific and general deterrence. Regarding supervised release, the government recommends a term of five years on Count 1, five years on Count 2, and three years on Count 3, all to run concurrently with one another. Finally, at the sentencing hearing, the government will submit an order of forfeiture relating to (1) certain property seized by law enforcement during post-arrest searches of the defendant's vehicle and the residence where he was staying when he was apprehended, and (2) the 224 firearms that Perkins is known to have trafficked.

CERTIFICATE OF SERVICE

I hereby certify that on August 24, 2018, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing to all counsel of record. I further certify that on August 24, 2018, I sent a copy of the foregoing to the Probation Officer assigned to this matter:

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_____/s/
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